

App. No. 10/773,739

Amendment under 37 CFR §1.111

REMARKS

Claims 1, 2, and 5-8 remain pending in the application. Claims 1 and 5 are independent claims. Claim 5 has been amended. Claims 3 and 4 have been cancelled. Reexamination and reconsideration of the application, as amended, are hereby respectfully requested.

Examiner has objected to Claims 5-8 because Claim 5 ends with a comma instead of a period, and because Claims 6-8 depend from Claim 5. The objection is obviated, since Claim 5 has been amended as advised by the Examiner so as to end with a period instead of a comma.

Examiner has rejected Claims 3 and 4 under 35 USC §103 as unpatentable over Schenach (US5447642) in view of Davis et al (Metals Handbook 9ed v16) further in view of Goodrich et al (US4871450). The rejection is obviated, since Claims 3 and 4 have been cancelled without prejudice.

Applicants acknowledge allowance of Claims 1 and 2 and potential allowability of Claims 5-8. In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), however, certain language in one of the patents at issue, similar to language originally employed in Claim 5 of the instant application, has been construed in a manner differing from that intended by the Applicants. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, the claim in question have been amended so as to ensure that the claims will be construed in the manner originally intended by the Applicants.

The recently-decided case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. It is presumed that this was the interpretation of the Examiner as well. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the

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Applicants, Claim 5 has been amended. The phrase "at least one of" has been deleted, and the conjunction "and" in the subsequent pair of items has been replaced by the conjunction "or". The conjunction "or" is to be construed inclusively (e.g., "a dog or a cat" would be interpreted as "a dog, or a cat, or both"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed. 2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either...or", "only one of...", or similar language; or ii) two or more of the listed alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicants believe that this amendment does not change the scope of the amended claims from the originally intended scope. In particular, the amendment set forth herein is not a narrowing amendment, nor is it made for reasons related to patentability.

In view of the above, it is respectfully submitted that Claims 1, 2, and 5-8 are in condition for allowance. Allowance of Claims 1, 2, and 5-8 at an early date is earnestly solicited.

Respectfully submitted,



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